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and TORRID

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

KAKU LAB CORPORATION,  
  
Plaintiff,  
  
v.  
  
HOT TOPIC, INC., a California  
Corporation; and DOES 1 through 20,  
inclusive,  
  
Defendants.

Case No. C07-05297 CRB

**[PROPOSED] ORDER  
TO STIPULATION FOR ENTRY  
OF PROTECTIVE ORDER RE  
CONFIDENTIALITY**

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**ORDER**

The Court, having read and considered the Stipulation for Entry of a Protective Order filed by the parties, and good cause appearing therefore,

**IT IS HEREBY ORDERED THAT:**

1. A party to this action who produces or provides documents, things, testimony, or other information, which he, she, or it reasonably believes to comprise or contain Confidential Information, and which he, she, or it desires to be subject to this Protective Order, shall designate such information or materials as either “CONFIDENTIAL” or “CONFIDENTIAL–ATTORNEYS’ EYES ONLY.” Confidential Information shall be defined as information which has not been made public, including trade secrets or other confidential research, development, or commercial information, material required to be kept confidential by state or federal law, or highly sensitive personal information.

2. The designation of documents, things, testimony, or other information as “CONFIDENTIAL” or “CONFIDENTIAL–ATTORNEYS’ EYES ONLY” shall be made as follows:

(a) Documents and things comprising or containing Confidential Information shall be designated by prominently stamping or marking the documents or things with the term “CONFIDENTIAL” or “CONFIDENTIAL–ATTORNEYS’ EYES ONLY.” If a confidential document consists of multiple pages, each page of the document shall be so stamped or marked.

(b) A deposition transcript comprising or containing Confidential Information shall be designated “CONFIDENTIAL” or “CONFIDENTIAL–ATTORNEYS’ EYES ONLY” by requesting such treatment thereof either on the record at the time of the deposition or by written notice after service of the deposition transcript. If confidential treatment of a deposition transcript is requested on the record at the time of the deposition, the requesting party shall instruct the court reporter to stamp or mark each page of the transcript containing the Confidential Information with the terms “CONFIDENTIAL” or “CONFIDENTIAL–ATTORNEYS’ EYES ONLY.” The requesting party may also instruct the court reporter to separately bind such

1 designated pages of the transcript. If confidential treatment of a transcript is requested by a party  
2 by written notice after completion of a deposition, such written notice shall be mailed to all other  
3 parties within twenty (20) days after completion and service of the transcript. Such written notice  
4 shall specifically identify by page and line number all portions of the transcript that should be  
5 treated as "CONFIDENTIAL" or "CONFIDENTIAL-ATTORNEYS' EYES ONLY" in  
6 accordance with this Protective Order. Documents or things used as exhibits at a deposition that a  
7 party desires to be subject to this Protective Order shall be separately stamped or marked  
8 "CONFIDENTIAL" or "CONFIDENTIAL-ATTORNEYS' EYES ONLY" as specified in  
9 paragraph 2(a).

10 (c) Any party may designate documents or things produced by a third party pursuant  
11 to a subpoena as "CONFIDENTIAL" or "CONFIDENTIAL-ATTORNEYS' EYES ONLY" by  
12 providing written notice to each other party within ten (10) days of receipt of the documents or  
13 things produced by the third party. Such written notice shall specifically identify each document  
14 or thing produced by the third party that should be treated as "CONFIDENTIAL" or  
15 "CONFIDENTIAL-ATTORNEYS' EYES ONLY" in accordance with this Protective Order.

16 (d) Notwithstanding any other provision of this Order, if any party believes that any  
17 document or other information not designated as "CONFIDENTIAL" or "CONFIDENTIAL-  
18 ATTORNEYS' EYES ONLY" should be so designated (except documents or information  
19 belonging to another party), that party shall notify the other parties within 30 days following  
20 production of the documents or other information and request that the information be designated  
21 as "CONFIDENTIAL" or "CONFIDENTIAL-ATTORNEYS' EYES ONLY." A party  
22 requesting that documents be treated as "CONFIDENTIAL" or "CONFIDENTIAL-  
23 ATTORNEYS' EYES ONLY" in accordance with this paragraph shall also provide each other  
24 party with copies of such documents that have been stamped or marked "CONFIDENTIAL" or  
25 "CONFIDENTIAL-ATTORNEYS' EYES ONLY" in the manner indicated above. Documents or  
26 information designated as "CONFIDENTIAL" or "CONFIDENTIAL-ATTORNEYS' EYES  
27 ONLY" in accordance with this paragraph shall be treated in accordance with such designation  
28 from the date of receipt of the request that they be so treated and receipt of copies of the

documents that have been appropriately stamped or marked “CONFIDENTIAL” or “CONFIDENTIAL-ATTORNEYS’ EYES ONLY.”

3. By designating a document, thing, testimony, or other information as “CONFIDENTIAL” or “CONFIDENTIAL-ATTORNEYS’ EYES ONLY” in accordance with this Protective Order, the party making such designation certifies that there is a good faith basis in both fact and law for the designation.

4. In the absence of designating a document, thing, testimony, or other information as “CONFIDENTIAL” or “CONFIDENTIAL-ATTORNEYS’ EYES ONLY” in accordance with this Protective Order, such documents, things, testimony, or other information shall be deemed to be non-confidential and not restricted by this Protective Order.

5. Information and materials designated as “CONFIDENTIAL” or “CONFIDENTIAL-ATTORNEYS’ EYES ONLY” shall be held by counsel in confidence and shall be used solely in connection with the prosecution, defense, or settlement of this action. Information and materials designated as “CONFIDENTIAL” or “CONFIDENTIAL-ATTORNEYS’ EYES ONLY” shall not be disclosed to any person except as hereinafter provided. Information and materials designated “CONFIDENTIAL” pursuant to this Protective Order (including any copies, summaries, excerpts, and abstracts derived therefrom) may be disclosed, directly or indirectly, only to the following qualified persons:

(a) The Court before which this action is pending and the clerks and other personnel of the Court;

(b) The attorneys of record for the parties in this matter;

(c) The office personnel employed by the attorneys of record working under direct supervision of said attorneys;

(d) Experts or other persons retained by counsel to assist in the prosecution, defense, or settlement of this action, provided that said experts and consultants expressly agree to be bound by the terms of this Protective Order;

(e) Any party, and any party’s officers, directors, or partners, provided that such persons expressly agree to be bound by the terms of this Protective Order;

1 (f) Third-party witnesses to the extent they have had access to the Confidential  
2 Information prior to the entry of this Protective Order;

3 (g) Court reporters at depositions or other proceedings in this matter and persons  
4 providing litigation support services for counsel of record including photocopying, videotaping,  
5 transcribing, translating, and preparing exhibits;

6 (h) Any mediator or arbitrator mutually selected by the parties or appointed by the  
7 Court for the purpose of assisting in the settlement of this action; and

8 (i) Such other persons as the parties may agree to in writing, or who may be  
9 designated by the Court.

10 6. Information and materials designated “CONFIDENTIAL–ATTORNEYS’ EYES  
11 ONLY” pursuant to this Protective Order (including any copies, summaries, excerpts, and  
12 abstracts derived therefrom) may be disclosed, directly or indirectly, only to the following  
13 qualified persons:

14 (a) The Court before which this action is pending and the clerks and other personnel  
15 of the Court;

16 (b) The attorneys of record for the parties in this matter;

17 (c) The office personnel employed by the attorneys of record working under direct  
18 supervision of said attorneys;

19 (d) Experts or other persons retained by counsel to assist in the prosecution, defense,  
20 or settlement of this action, provided that said experts and consultants expressly agree to be  
21 bound by the terms of this Protective Order;

22 (e) Third-party witnesses to the extent they have had access to the Confidential  
23 Information prior to the entry of this Protective Order;

24 (f) Court reporters at depositions or other proceedings in this matter and persons  
25 providing litigation support services for counsel of record including photocopying, videotaping,  
26 transcribing, translating, and preparing exhibits;

27 (g) Any mediator or arbitrator mutually selected by the parties or appointed by the  
28 Court for the purpose of assisting in the settlement of this action; and

(h) Such other persons as the parties may agree to in writing, or who may be designated by the Court.

7. Prior to receiving any documents, things, testimony, or other information designated as "CONFIDENTIAL" or "CONFIDENTIAL-ATTORNEYS' EYES ONLY," each "qualified person" specified above in paragraphs 6(d) and (e) and 7(d) shall be provided with a copy of this Protective Order and shall execute a Nondisclosure Agreement in the form of Attachment A. Counsel who disclose designated Confidential Information to such a "qualified person" shall maintain the executed copy of the Nondisclosure Agreement in his or her file and make it available at or in connection with any Court proceeding where it may be called for.

8. This Protective Order shall not expand or restrict the rights of any party to either demand the production of any documents, things, or information, or to object to any demand for documents, things, or information, or to withhold any documents, things, or information. Nor shall this Protective Order expand or restrict the rights of any party to seek to have the Court compel the production of any documents, things, or information.

9. This Protective Order shall not restrict the rights of any party to use or disseminate any documents, things, or information obtained independently of discovery in this action, whether or not such documents, things, or information are also obtained through discovery. Nothing in this Protective Order shall restrict a party from using, disclosing, or disseminating its own documents, things, or information as it deems appropriate, whether or not such documents, things, or information have been designated "CONFIDENTIAL" or "CONFIDENTIAL-ATTORNEYS' EYES ONLY" in accordance with this Protective Order.

10. If any documents, things, or information designated as "CONFIDENTIAL" or "CONFIDENTIAL-ATTORNEYS' EYES ONLY" are included with any papers filed with the Court, the proposed filing shall be accompanied by an application to file the papers, or the portion thereof containing the protected information, under seal. This application shall be directed to the judge to whom the papers are directed. In addition, the filing party shall file such papers and

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1 materials under seal in accordance with the procedures required by California Northern District  
2 Civil Local Rule 79-5 or other similar Court rules that may be controlling at the time of the filing  
3 of such papers or materials.

4 11. In the event that any documents, things, or information designated as  
5 "CONFIDENTIAL" or "CONFIDENTIAL-ATTORNEYS' EYES ONLY" are used in any Court  
6 proceeding in this action, the parties shall take all reasonable steps to maintain their  
7 confidentiality, provided that any protective measures relating to confidential information used in  
8 Court proceedings in this matter shall be presented, at an appropriate time, to the judicial officer  
9 conducting the proceeding.

10 12. Maintenance of the protected status of any "CONFIDENTIAL" or  
11 "CONFIDENTIAL-ATTORNEYS' EYES ONLY" documents, things, or information shall in all  
12 cases be subject to further order of the Court. Nothing herein shall preclude any party upon  
13 proper notice to all other parties from applying to the Court for any modification of this  
14 Protective Order, or moving the Court for an order changing the status of any particular  
15 designated information or document, or relieving a party from the restrictions contained in this  
16 Protective Order, or from applying to the Court for further or additional protective orders. Any  
17 motion filed with respect to this Protective Order or documents, things, or information labeled  
18 "CONFIDENTIAL" or "CONFIDENTIAL-ATTORNEYS' EYES ONLY" must comply with the  
19 Local Rules.

20 13. No party shall be obligated to challenge the propriety of the designation of any  
21 documents, things, or information as "CONFIDENTIAL" or "CONFIDENTIAL-ATTORNEYS'  
22 EYES ONLY," and the failure to do so shall not constitute acquiescence as to the appropriateness  
23 of the designation or otherwise preclude a subsequent challenge to the designation.

24 14. The inadvertent production of any confidential document lacking the physical  
25 designation "CONFIDENTIAL" or "CONFIDENTIAL-ATTORNEYS' EYES ONLY" shall be  
26 without prejudice to any subsequent claim that such material is confidential, and no party shall be  
27 held to have waived any rights by such inadvertent production. Upon written demand of the  
28 producing party or non-party, all copies of any confidential document lacking the physical



1 designation "CONFIDENTIAL" or "CONFIDENTIAL-ATTORNEYS' EYES ONLY" shall be  
2 returned immediately to the producing party. The producing party will supply to each of the other  
3 parties a copy of the document properly designated "CONFIDENTIAL" or "CONFIDENTIAL--  
4 ATTORNEYS' EYES ONLY" concurrently with the written demand for return. Any disclosure  
5 made before such notification shall not be deemed to be in violation of this Protective Order.

6 15. The inadvertent production of any privileged document or any document protected  
7 from disclosure by the work product doctrine shall be without prejudice to any subsequent claim  
8 that such document is privileged or protected from disclosure by the work product doctrine. The  
9 failure to designate any document in accordance with the terms of this Protective Order shall not,  
10 by itself, be deemed an automatic waiver of the privilege or the work product doctrine.

11 16. At the final conclusion of this action, including any appeal or time for appeal, any  
12 party may serve a written notice on the other parties demanding that the "CONFIDENTIAL" or  
13 "CONFIDENTIAL-ATTORNEYS' EYES ONLY" documents and things that were produced by  
14 that party and that are still in existence, including all copies, summaries, excerpts, and abstracts  
15 thereof, be returned or destroyed. Within thirty (30) days of receipt of such a demand, counsel  
16 shall certify in writing that such documents and things have been returned or destroyed.  
17 Notwithstanding the foregoing, counsel may retain archival copies of documents consisting of or  
18 containing Confidential Information, including trial, hearing, and deposition transcripts and  
19 exhibits, and pleadings and other documents submitted to the Court. Counsel may also retain  
20 documents or things that are their own work product or that are subject to the attorney-client  
21 privilege.

22 17. The parties to this agreement may change its terms or effects at any time by further  
23 mutual agreements in writing as approved by the Court.

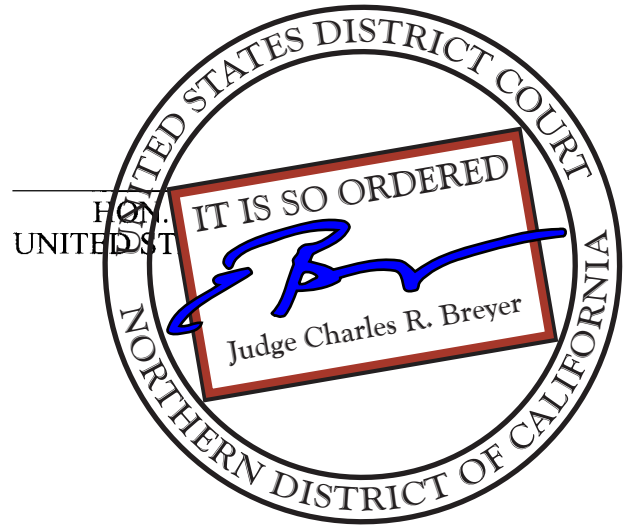
24 18. This Protective Order is entered solely for the purpose of facilitating the exchange  
25 of documents, things, and information between the parties in this action. Nothing in this  
26 Protective Order nor the production of any documents, things, or information under the terms of  
27 this Protective Order nor any proceedings pursuant to this Protective Order shall be deemed to  
28 have the effect of an admission or waiver of any kind by any party.



1           19.     The parties and their attorneys and any other persons subject to the terms of this  
2 Protective Order agree that the Court shall have jurisdiction over them for the purpose of  
3 enforcing this Protective Order.

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5           **IT IS SO ORDERED.**

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7           DATED: May 16, 2008



Ropers Majeski Kohn & Bentley  
A Professional Corporation  
Los Angeles